



222026

Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

James R. Paschall
Senior General Attorney

Writer's Direct Dial Number

(757) 629-2759
fax (757) 533-4872

April 8, 2008

Fax 202-245-0458
Original and 10 copies via U. S. Mail

ENTERED
Office of Proceedings

Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

APR - 8 2008

Part of
Public Record

**Re: STB Docket No. AB-290 (Sub-No. 288X), Norfolk Southern Railway
Company - Abandonment Exemption - In Bergen County, NJ -
Request or Motion to Withdraw Notice of Exemption**

Dear Ms. Quinlan:

Norfolk Southern Railway Company (NSR) hereby withdraws the Notice of Exemption to abandon a 1.40-mile line of railroad between Milepost UQ 8.80 and Milepost UQ 10.20, in Rutherford, Bergen County, NJ, which was filed by NSR on May 11, 2007 and served by the Board and published in the Federal Register on May 31, 2007 in the subject proceeding.¹ If NSR requires the Board's formal permission to withdraw the Notice of Exemption, NSR hereby requests leave to withdraw the Notice of Exemption. Also, if necessary, NSR asks that this request to be treated as a motion to withdraw the Notice of Exemption. NSR requests that the Board rescind the previously served exemption and dismiss this proceeding without prejudice to any future NSR filing of a notice of or a petition for exemption or an application for authority to abandon or to discontinue service over the line. NSR asks that the Board declare moot the notice of intent to submit an Offer of Financial Assistance (OFA) and accompanying request for

¹The subject line is a dead-end spur or industrial lead track, sometimes referred to as the Carlton Hill Spur. The line was once part of a longer Erie Lackawanna line that was acquired by Consolidated Rail Corporation ("Conrail") under the Final System Plan. NSR acquired the line on June 1, 1999 as part of the Conrail Transaction approved by the Board in *CSX Corp. et al. - Control - Conrail Inc. et al.*, 3 S.T.B. 196 (1998), as modified in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

Ms. Anne K. Quinlan
STB No AB-290, Sub-No. 288X
April 8, 2008
Page 2 of 3

line valuation information by Bergen Passaic Rail Corporation d/b/a BP Rail ("BPR").

NSR proposed to abandon the subject line in order to remove a long unused line, over which there is no reasonable prospect of future rail service, from its system.² NSR's environmental report noted that the line had been out of service since before NSR acquired it in 1999. Clearly, no shippers will be affected by the withdrawal of the Notice of Exemption. NSR also wished to have the Board's jurisdiction over the line removed so that NSR might complete an agreement with the Town of Rutherford and/or other local governmental entity for the conveyance of the property for public purposes. However, no formal agreement between NSR and a local government yet has been reached. Moreover, the matter has been complicated, and negotiation of a final agreement has been hampered, by BPR's OFA.

If an agreement for disposition of the line could be reached, it would be the best evidence, under Board precedents, to show the net liquidation value of the land for its highest and best non-rail use. In view of the absence of an agreement and the uncertain status of the matter, however, a principal reason for the filing of the Notice of Exemption can not be achieved at this time under the circumstances.

NSR has previously requested that the Board permit modification of the requested exemption from an exemption for abandonment of the line to an exemption only for the lesser action of discontinuance of service over the line.³ If the line were in discontinued status, however, NSR would need to file a new notice, exemption or application to abandon the line to complete the transaction even if an agreement for disposition of the property subsequently can be reached. Moreover, having the line in discontinued status would accomplish little else in this case since the Board now has been advised of the line's condition, non-use and history and of the unlikelihood that rail service over the line ever would be reasonably requested.

Thus, in order to clear the Board's docket of this matter and to allow time

²The procedural history of this proceeding is set forth in the Board's decision served March 24, 2008, which tolled the time period for BPR to file an OFA to May 23, 2008 and postponed the effective date of the exemption in this proceeding to June 2, 2008.

³This would be in line with Board precedents. See *BNSF Railway Company - Abandonment Exemption - in Fergus County, MT*, STB Docket No AB-6 (Sub-No. 434X) (STB served June 6, 2007), *BNSF Railway Company - Abandonment Exemption - in Dawson and McCone Counties, MT*, STB Docket No AB-6 (Sub-No. 424X) (STB served January 8, 2007) and *The Burlington Northern and Santa Fe Railway Company - Abandonment Exemption - in Hamilton and Merrick Counties, NE*, STB Docket No AB-6 (Sub-No. 408X) (STB served May 26, 2004).

Ms. Anne K. Quinlan
 STB No. AB-290, Sub-No. 288X
 April 8, 2008
 Page 3 of 3

for NSR to re-evaluate its plans for the property, to discuss disposition of the property with the governmental entities, to gather additional valuation information, to research or research again the status of the Line on the effective date of the Final System Plan, NSR believes that withdrawal of the Notice of Exemption and dismissal of the current proceeding would be the best current handling of the matter

When a railroad is authorized to abandon a line, the abandonment authority is permissive, not mandatory. The railroad can choose to exercise that authority or not. Because railroads are not compelled to abandon rail lines, the Board normally grants a railroad's motion to withdraw its request for abandonment authority or exemption.⁴ Thank you for your consideration of this matter

Very truly yours



James R. Paschall

cc. Via Fax 973-798-6234 and U S. Mail
 Mr. Vincent Caruso, Jr.
 BP Rail Corporation
 22 Somerset Place
 Clifton, NJ 07012

⁴Thus, withdrawal of a notice of exemption, petition for exemption or application for authority to abandon or discontinue service over a rail line is in line with Board precedent including *The Cincinnati, New Orleans and Texas Pacific Railway Company - Abandonment Exemption - in Scott County, TN*, STB Docket No. AB-290 (Sub-No. 279X) (STB served April 24, 2007); *Norfolk Southern Railway Company - Abandonment Exemption - in Lorain County, OH*, STB Docket No. AB-290 (Sub-No. 268X) (STB served October 25, 2006); *The Burlington Northern and Santa Fe Railway Company - Abandonment Exemption - In Hamilton and Merrick Counties, NE*, STB Docket No. AB-6 (Sub-No. 408X) (STB served May 26, 2004) (partial withdrawal of exemption notice), *Almona LP - Abandonment Exemption - In Allegheny County, PA*, STB Docket No. AB-842X (STB served Jan. 28, 2004); *Massachusetts Port Authority - Acquisition Exemption - Certain Assets of Boston and Maine Corporation*, STB Finance Docket No. 34276 (STB served March 25, 2003) embracing Boston and Maine Corporation - Abandonment - in Suffolk County, MA, STB Docket No. AB-32 (Sub-No. 92); *Kansas Southwestern Railway, L.L.C. - Abandonment - in Sumner, Harper, Barber, Reno and Kingman Counties, KS*, STB Docket No. AB-437 (Sub-No. 1) (STB served May 23, 2001); *Maine Central Railroad Company - Abandonment Exemption - In Androscoggin County, ME*, STB Docket No. AB-83 (Sub-No. 16X) (STB served September 15, 2000), *Soo Line Railroad Company - Abandonment Exemption - In Marshall and Roberts Counties, SD*, STB Docket No. AB-57 (Sub-No. 50X) (STB served August 15, 2000), *Soo Line Railroad Company - Abandonment - in Roberts County, SD*, STB Docket No. AB-57 (Sub-No. 51) (STB served August 14, 2000) and other cases cited in NSR's Reply to Motion to Compel, filed December 18, 2007.